IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Criminal Writ Petition No.343 of 2006

Shivkumar @ Chikku s/o Lakhanlal Yadav
vrs
State of Maharashtra and one

Office Notes, Office Memoranda of Coram, : Appearances, Court's orders or directions : Court's or Judge's orders and Registrar's orders.

Mr. V.K. Gulhane, Advocate for the petitioner,
Mr. A.D. Sonak, APP for the respondents/State.

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CORAM : K. J. ROHEE & C. L. PANGARKAR, JJ
DATED : OCTOBER 06, 2006

P.C.

1. Rule. Returnable forthwith. Heard finally by consent of parties.

2. The petitioner is a life convict. He was arrested in connection with the crime on 1.5.2002 and was convicted by judgment dated 26.3.2004. For the first time the petitioner applied for furlough. However, by order dated 12.6.2006 passed by respondent no.2, his application was rejected on two grounds, firstly that there was danger from the petitioner to the lives of the prosecution witnesses and secondly two of his co-accused absconded while on furlough.

3. The learned counsel for the petitioner submitted that the absconding co-convicts are not related to the present petitioner. This statement has not been controverted on behalf of the respondents/State. Thus, on the ground that the co-convicts of the petitioner have absconded, furlough leave can't be denied to the petitioner.

4. As regards another ground of rejection, the respondents/State have produced the statement of Jaiprakash Singh s/o Mistrisingh Thakur (the brother of deceased) which shows that he learnt from the people that he would be wiped out in case of release of the petitioner on furlough/parole.

5. Firstly, it may be noted that there is nothing in the statement of Jaiprakash that the petitioner directly made any attempt to threaten him. Secondly the reports submitted by Additional Superintendent of Police, Nagpur District (Rural), Nagpur dated 28.2.2006 merely mentions that in case the convict is released on furlough/parole, there is likelihood of breach of peace. This ground cannot be considered for rejecting the furlough leave to the petitioner for two grounds; firstly this ground is not reflected in the impugned order dated 12.6.2006 and secondly the impugned order does not show as to

whether it has assessed as to whether the conflict which is likely to occur between these witnesses and the prisoner, if he is released on furlough, would result in causing breach of public peace and tranquility. As has been observed by this Court in ***Sanjay Kisan Kadse .vrs. State of Maharashtra and others, 2004 (1) Mh.L.J. 789***, the Competent Authority is required to assess as to whether the conflict which is likely to occur between these witnesses and the prisoner, if he is released on furlough, would result in causing breach of public peace and tranquility on the basis of facts and circumstances involved. It was further observed that mere opposition to release of the prisoner by the witnesses on the ground of likelihood of harm simpliciter would not be sufficient to deny furlough leave to the prisoner.

6. It is thus obvious that the grounds mentioned in the impugned order for rejecting furlough leave to the petitioner are inadequate and the impugned order can't be sustained. Hence the order :

7. The writ petition is allowed. The impugned order dated 12.6.2006 passed by respondent no.2 is hereby quashed and set aside. The competent authority is directed to release the petitioner on furlough for two weeks on his executing sufficient security. A

condition may also be imposed that the petitioner shall report the concerned Police Station on every alternate day during the period of furlough.

8. Rule is made absolute in the above terms.

JUDGE **JUDGE**

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